



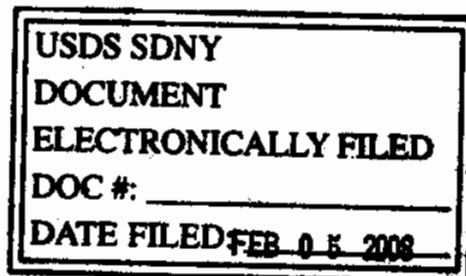
THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MARTHA COAKLEY
ATTORNEY GENERAL

(617) 727-2200
www.ago.state.ma.us

February 4, 2008



By fax: (212) 865-6304

The Honorable Paul A. Crotty
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street, Room 735
New York, New York 10007

Re: *State of New York, et al. v. United States Department of Health and Human Services, 07-CV-8621 (PAC)*

Dear Judge Crotty:

Pursuant to Your Honor's Individual Practices, Massachusetts Attorney General Martha Coakley hereby submits this pre-motion letter seeking leave to file an amicus brief in the above-captioned matter. The Commonwealth of Massachusetts' interest in this litigation is significant, as it currently extends coverage under its State Children's Health Insurance Program (SCHIP) to children in families with effective family income levels up to 300 percent of the federal poverty level. Plaintiff State of New York and defendant consent to our filing an amicus in this matter.

On August 17, 2007, the Department of Health and Human Services' Centers for Medicare and Medicaid Services (CMS) issued a State Health Official letter concerning eligibility under the SCHIP program. Under the new rule, the Commonwealth of Massachusetts, along with many other states, would be able to continue to provide health coverage to low-income children over 250 percent of the federal poverty level only if CMS finds that the criteria outlined in its August 17 letter are satisfied. The letter advises that in the event that Massachusetts' state plan fails to satisfy these criteria, CMS "may pursue corrective action."

Since the inception of the SCHIP program in 1997, the federal government has accorded the states wide latitude in administering their own SCHIP programs. 42 U.S.C. § 1397bb(b), 42 C.F.R. § 457.1. Massachusetts administers a combination Medicaid expansion and separate SCHIP program and until 2006, covered children with family incomes up to 200 percent of the federal poverty level. As part of Massachusetts' enactment of health care reform in 2006, the

MEMO ENDORSED

MEMO ENDORSED

The Honorable Paul A. Crotty
February 4, 2008
Page 2 of 3

Commonwealth sought and received from CMS express approval to expand its income eligibility limit to 300 percent of the federal poverty level. Based on that approval, and in reliance upon it, Massachusetts took the necessary steps to extend coverage to those additional low-income children.

The August 17 letter departs from CMS' earlier approval in significant ways, by imposing different and more stringent limits. In so doing, it will likely impair the Commonwealth's ability to ensure adequate health insurance for its underserved children. The apparent rationale underlying the August 17 letter is to prevent "crowd-out," i.e., the substitution of public SCHIP coverage for private coverage. Such an assumption has questionable support and there is evidence which suggests that *expanding*, rather than *limiting*, eligibility positively affects participation rates among lower income children. In any event, the issues raised by CMS' newly imposed restrictions, and the assumptions underlying those new restrictions, appropriately are the subject for the type of public debate that the notice and comment requirements of the Administrative Procedure Act (APA) likely would elicit.

Thank you for your consideration of this request to participate as an amicus in this matter.

MARTHA COAKLEY
ATTORNEY GENERAL

Emily R. Paradise

Emily R. Paradise
Quentin A. Palfrey
Assistant Attorneys General
Health Care Division

cc: Serrin Andrew Turner, Esq.
Assistant United States Attorney
Counsel for Defendant United States Department of Health & Human Services

John M. Schwarz, Esq.
Assistant Attorney General
Counsel for Plaintiff State of New York

Karen Konieczny, Esq.
Assistant Attorney General
Counsel for Plaintiff State of Illinois

Joel Tornari, Esq.
Assistant Attorney General
Counsel for Plaintiff State of Maryland

William L. Williams, Esq.
Senior Assistant Attorney General

** The request is granted. Massachusetts may file a brief of no more than 25 pages.*

SO ORDERED: FEB 05 2008

Paul A. Crotty
HON. PAULA A. CROTTY
UNITED STATES DISTRICT JUDGE

The Honorable Paul A. Crotty
February 4, 2008
Page 3 of 3

Catherine R. Hoover, Esq.
Assistant Attorney General
Counsel for Plaintiff State of Washington